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**Introduced by Senator Maldonado**

February 9, 2005

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An act to amend Sections 17072, 17215, and 19184 of, and to add Sections 17138.5, 17138.6, and 17216 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 173, as introduced, Maldonado. Income tax: health savings account.

The Personal Income Tax Law authorizes various deductions in computing income that is subject to tax under that law.

This bill would allow a deduction in connection with health savings accounts in conformity with recently enacted federal law. In general, the deduction would be an amount equal to the aggregate amount paid in cash during the taxable year by or on behalf of an eligible individual, as defined, to a health savings account of that individual, as provided. This bill would also provide related conformity to that federal law with respect to treatment of the account as a tax-exempt trust, the allowance of rollovers from Archer medical savings accounts to a health savings account, and penalties in connection therewith.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 17072 of the Revenue and Taxation
- 2 Code is amended to read:



1 17072. (a) Section 62 of the Internal Revenue Code, relating  
2 to adjusted gross income defined, applies, except as otherwise  
3 provided.

4 (b) The deduction allowed by Section 17204, relating to  
5 interest on education loans, is allowed in computing adjusted  
6 gross income.

7 ~~(c) (1) The deductions allowed in computing adjusted gross~~  
8 ~~income include the deductions allowed by Section 162 of the~~  
9 ~~Internal Revenue Code, as modified by Section 17202.5,~~  
10 ~~determined under Section 62(a)(2)(E) of the Internal Revenue~~  
11 ~~Code, as added by the Military Family Tax Relief Act of 2003~~  
12 ~~(Public Law 108-121).~~

13 ~~(2) The amendments made to this section by the act adding~~  
14 ~~this subdivision shall apply to amounts paid or incurred in~~  
15 ~~taxable years beginning after December 31, 2002. The deduction~~  
16 ~~allowed by Section 17216, relating to health savings accounts, is~~  
17 ~~allowed in computing adjusted gross income.~~

18 (d) *The amendments made to this section by the act adding*  
19 *this subdivision shall apply only to each taxable year beginning*  
20 *on or after January 1, 2006.*

21 SEC. 2. Section 17138.5 is added to the Revenue and  
22 Taxation Code, to read:

23 17138.5. For each taxable year beginning on or after January  
24 1, 2006, Section 106 of the Internal Revenue Code, as amended  
25 by Section 1201 of the Medicare Prescription Drug,  
26 Improvement, and Modernization Act of 2003 (P.L. 108-173),  
27 relating to health savings accounts, shall apply, except as  
28 otherwise provided.

29 SEC. 3. Section 17138.6 is added to the Revenue and  
30 Taxation Code, to read:

31 17138.6. For each taxable year beginning on or after January  
32 1, 2006, Section 125 of the Internal Revenue Code, as amended  
33 by Section 1201 of the Medicare Prescription Drug,  
34 Improvement, and Modernization Act of 2003 (P.L. 108-173),  
35 relating to health savings accounts, shall apply, except as  
36 otherwise provided.

37 SEC. 4. Section 17215 of the Revenue and Taxation Code is  
38 amended to read:

39 17215. (a) Section 220(a) of the Internal Revenue Code,  
40 relating to deduction allowed, is modified to provide that the



1 amount allowed as a deduction shall be an amount equal to the  
2 amount allowed to that individual as a deduction under Section  
3 220 of the Internal Revenue Code, relating to medical savings  
4 accounts, on the federal income tax return filed for the same  
5 taxable year by that individual.

6 (b) Section 220(f)(4) of the Internal Revenue Code, relating to  
7 additional tax on distributions not used for qualified medical  
8 expenses, is modified by substituting “10 percent” in lieu of “15  
9 percent.”

10 (c) *Section 220(f)(5) of the Internal Revenue Code, as*  
11 *amended by Section 1201(c) of the Medicare Prescription Drug,*  
12 *Improvement, and Modernization Act of 2003 (P.L. 108–173),*  
13 *relating to rollovers from Archer MSAs permitted, shall apply,*  
14 *except as otherwise provided.*

15 (d) *The amendments made to this section by the act adding*  
16 *this subdivision shall apply only to each taxable year beginning*  
17 *on or after January 1, 2006.*

18 SEC. 5. Section 17216 is added to the Revenue and Taxation  
19 Code, to read:

20 17216. For each taxable year beginning on or after January 1,  
21 2006, all of the following apply:

22 (a) Section 223 of the Internal Revenue Code, as added by  
23 Section 1201 of the Medicare Prescription Drug, Improvement,  
24 and Modernization Act of 2003 (P.L. 108–173), relating to health  
25 savings accounts, shall apply, except as otherwise provided.

26 (b) Section 223(e)(1) of the Internal Revenue Code, as added  
27 by Section 1201 of the Medicare Prescription Drug,  
28 Improvement, and Modernization Act of 2003 (P.L. 108–173),  
29 shall be modified by substituting the phrase “Section 17651” for  
30 the phrase “section 511 (relating to imposition of tax of unrelated  
31 business income of charitable, etc., organizations),” contained  
32 therein.

33 (c) Section 223(f)(4)(A) of the Internal Revenue Code, as  
34 added by Section 1201 of the Medicare Prescription Drug,  
35 Improvement, and Modernization Act of 2003 (P.L. 108–173),  
36 shall be modified by substituting “2 ½ percent” for “10 percent,”  
37 contained therein.

38 SEC. 6. Section 19184 of the Revenue and Taxation Code is  
39 amended to read:



1 19184. (a) A penalty of fifty dollars (\$50) shall be imposed  
2 for each failure, unless it is shown that the failure is due to  
3 reasonable cause, by any person required to file who fails to file  
4 a report at the time and in the manner required by any of the  
5 following provisions:

6 (1) Subdivision (c) of Section 17507, relating to individual  
7 retirement accounts.

8 (2) Section 220(h) of the Internal Revenue Code, relating to  
9 medical savings accounts for taxable years beginning on or after  
10 January 1, 1997.

11 (3) *Section 223(h) of the Internal Revenue Code, as added by*  
12 *Section 201 of the Medicare Prescription Drug, Improvement,*  
13 *and Modernization Act of 2003 (P.L. 108-173), relating to health*  
14 *savings accounts.*

15 (4) Subdivision (b) of Section 17140.3 or subdivision (b) of  
16 Section 23711 relating to qualified tuition programs.

17 ~~(4)–~~

18 (5) Subdivision (e) of Section 23712, relating to education  
19 individual retirement accounts.

20 (b) (1) Any individual who:

21 (A) Is required to furnish information under Section 17508 as  
22 to the amount designated nondeductible contributions made for  
23 any taxable year, and

24 (B) Overstates the amount of those contributions made for that  
25 taxable year, shall pay a penalty of one hundred dollars (\$100)  
26 for each overstatement unless it is shown that the overstatement  
27 is due to reasonable cause.

28 (2) Any individual who fails to file a form required to be filed  
29 by the Franchise Tax Board under Section 17508 shall pay a  
30 penalty of fifty dollars (\$50) for each failure unless it is shown  
31 that the failure is due to reasonable cause.

32 (c) Article 3 (commencing with Section 19031) of this chapter  
33 (relating to deficiency assessments) shall not apply in respect of  
34 the assessment or collection of any penalty imposed under this  
35 section.

36 (d) *The amendments made to this section by the act adding*  
37 *this subdivision shall apply only to each taxable year beginning*  
38 *on or after January 1, 2006.*

39 SEC. 7. This act provides for a tax levy within the meaning of  
40 Article IV of the Constitution and shall go into immediate effect.



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